CF0000061290

CA 1638/97

(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

No. ..... Name (1) 5589 अचरिउ खप s/o सुरेन — ग्राम भैसा भुण्डा
(2) 5588 मारकुस खप s/o [illegible] — ग्राम रामनगर
(3) 5590 शिवशंकर ए शंकर s/o मोती — ग्राम भैसा भुंडा

Father's name ..... थाना — बलराम पुर, जिला — सरगुजा (म.प्र.)

Residence ..... Age क्रमशः 30, 30, 35 वर्ष

Sentenced to 10 वर्ष, आजीवन कारावास On 19/5/97

Under section 396/397 एवं 302/34 (2) by IInd प्रथम अपर सत्र न्यायालय अम्बिकापुर सरगुजा (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent 1/7/97

4 Whether the prisoner wishes to be represented or not – Yes / No

No. ..... Name (1) 5589 अचरिउ s/o सुरेन
(2) 5588 मारकुस s/o [illegible]
(3) 5590 शिवशंकर ए शंकर s/o मोती

Confined in ..... केन्द्रीय Jail ..... रायपुर (म.प्र.)

No. 248 बिबि/97 Dated 1/7/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म.प्र. जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- ST No 221/94 एवं 228/94 की दायाप्ति।

Superintendent 1/7/97
..... Jail .....

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

High Court of Madhya Pradesh
JABALPUR
Receipt on 7 JUL 1997
Registration No. 540

Date of receipt in Appellate Court .....

(P. T. O.)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A 1638/97 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Division Bench: -
Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

13.1.2005

Shri Abhay Tiwari, counsel for the appellants.

Shri Prafull Bharat, Panel Lawyer for the State/respondents.

The accused/appellants have preferred this appeal under Section 374 (2) of the Cr.P.C. through the Superintendent, Central Jai, Raipur, being aggrieved by the judgment dated 19.5.1997 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial Nos.221/94 & 228/94, whereby the learned 1st Additional Sessions Judge after holding the accused/appellants guilty for the commission of offence under Sections 394 read with Section 397 and 302 read with Section 34 of the I.P.C. sentenced each of the accused to undergo R.I. for ten years under Section 394 read with Section 397 of the I.P.C. and to undergo imprisonment for life under Section 302 read with Section 34 of the I.P.C. Both the sentences were directed to run concurrently.

Brief facts leading to filing of this appeal are that Ram Sakal (PW-4) gave merg intimation on 6.3.1994 to Police Station: Balrampur that he is resident of Village: Bhaisamunda, that in the morning at about 6.45 when he was at residence Banarasi, the Chowkidar of Village: Bhaisamunda came to his house and informed that two dead bodies are lying near Ramnagar Plantation in the forest area and blood was oozing out of those dead bodies. On receiving this information, he along with Ramnaresh Yadav, Ramesh, Dalvir

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR.A.1638/97 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Yadav and Ramjatan went to the spot and saw the bodies of two persons, who used to sell clothes, were lying, injuries were present on the stomach and chest, and one knife was also lying on the spot. On receiving this report, Police registered the case and started investigation.

During the investigation, B.N. Singh (PW-12), the Investigating Officer, reached the site and gave notices Ex.P-16 & 18 to Panchas for preparing Panchanamas, and thereafter, Panchanamas Ex.P-17 & 19 of the dead bodies of Ramdhani & Surendra were prepared and bodies were sent to the hospital for postmortem examination. Certain utensils, cash amount and clothes were also taken into possession by the Investigating Officer. One Lungi was also taken into possession under Ex.P-32. One knife, which was lying near the body of Ramdhani, and Gamcha were also taken into possession under Ex.P-36. Plain soil and blood stained soil were also taken into possession. During the course of investigation, accused Markus was taken into police custody and he gave memorandum (Ex.P-21) under Section 27 of the Evidence Act, and in pursuance to that he got recovered the knife under memorandum Ex.P-22. Accused Adhir also gave information Ex.P-26 and based on that information currency notes of Rs.116/- were taken into possession under Ex.P-27. During the police custody, accused Shiv Shanker gave information Ex.P-23, and in pursuance to that chisel was taken into possession under Ex.P-24. One currency note of Rs.50/- was also taken into possession under Ex.P-28 from accused Shiv Shanker.

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मामला क्रमांक G.A. 1638/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

One shawl and Lungi were taken into possession from accused Adhir under Ex.P-25. The recovered articles were sent for examination to the Forensic Science Laboratory. The post mortem was conducted by Dr. N.K. Dutta (PW-1) and the recovered Lungi of accused Shiv Shanker was got identified under Ex.P-20 by one Ramesh Badhai.

After completion of the investigation, charge sheets for the commission of murder of Ramdhani and Surendra were filed against the accused/appellants. The learned 1st Additional Sessions Judge, Ambikapur, received the sessions cases for trial from the Sessions Judge, Ambikapur, who after framing the charges, and recording the prosecution evidence and statements of the accused/appellants under Section 313 of the Cr.P.C., and hearing the arguments of the Additional Public Prosecutor and the counsel for the appellants convicted and sentenced the accused/appellants in the manner as mentioned above.

We have heard learned counsel for the appellants Mr. Abhay Tiwari and Mr. Prafull Bharat, learned Panel Lawyer on behalf of the State/respondent.

As far as the question of nature of death of deceased Ramdhani & Surendra are being concerned as homicidal, learned counsel for the appellants has not disputed the same. Even otherwise, PW-1 Dr. N.K. Dutta has stated that on 7.3.1994 he conducted the postmortem examination on the dead body of Surendra and found that one stab wound was present on the neck, one other injury was present on the chest, and other stab injury was also present on the right side of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

neck in the size of 1 x ½ inch. His postmortem report is Ex.P-1. The injuries were inflicted within 24-36 hours and the cause of death was shock and comma as a result of excessive bleeding. Both the external carotid veins were found cut and the nature of death was homicidal. The doctor further stated that on the same day he conducted the postmortem on the body of Ramdhani and four injuries were found on his body out of which injury Nos. 2 & 3 were stab wounds on chest and near collar bone, and the cause of death of Ramdhani was due to excessive bleeding and haemorrhage. The death was homicidal in nature. His report is Ex.P-2. Therefore, in view of the above evidence of the doctor it stands proved that the deaths of both Ramdhani & Surendra were homicidal in nature.

Now coming to the involvement of the accused persons in committing the murders of Ramdhani & Surendra, there is no direct evidence and eyewitnesses in this case. Whole case rests on circumstantial evidence. The Hon'ble Apex Court in the case of **Nesar Ahmed vs. State of Bihar** reported in **AIR 2001 Supreme Court 2416** has held that, in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

guilt of the accused. It is on the basis of these principles now we shall examine the circumstantial evidence relied upon by the prosecution in this case.

We have to see as to whether based on the settled principle, the prosecution has been able to establish that the accused persons are the only persons who committed the murder of Ramdhani & Surendra. The whole case rests only on recovery of a currency note of Rs.50/- from the possession of accused Shiv Shanker under Ex.P-28; chisel, the weapon of offence, under Ex.P-24; knife, the weapon of offence from accused Markus under Ex.P-22; Lungi & shawl from accused Adhir under Ex.P-25; and Rs.116/- from accused Adhir under Ex.P-27. As far as the recovery of currency notes is concerned, it is stated that blood was present on the currency note of Rs.50/- and also on the knife. In this connection, the F.S.L. report Ex.P-40 is relevant. As per the F.S.L. report Ex.P-40, blood was found on the knife, but no blood was present on the chisel, and blood was also found on the currency note of Rs.50/-. But there is no report that the blood was human blood and that too of the same group of the deceased persons. Therefore, merely on this F.S.L. report the accused/appellants cannot be connected with the murder of Ramdhani & Surendra. There is no other evidence, which lends support to the prosecution case in connecting the accused/ appellants with the murder of Ramdhani & Surendra. As far as the recovery of Lungi of Shiv Shanker from the place of occurrence is concerned, the Police got it identified under Ex.P-20 by one witness

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

namely, Ramesh Badhai in the presence of PW-8 Suresh. Ramesh was the person who stated that the Lungi belongs to accused Shiv Shanker, but Ramesh has not been produced before the Court to prove the fact that the recovered Lungi belongs to accused Shiv Shanker. PW-8 Suresh has simply stated that the Lungi was got identified behind the hospital at about 11 a.m. in the morning, at that time he was going on the way and Police got it identified. There is no legal evidence that the said Lungi was sealed at the spot and at the time of identification it was opened. On account of non-production of Ramesh who identified the Lungi, there is no evidence that the said Lungi was of accused Shiv Shanker, and that the Lungi was kept in sealed cover, and which was opened only in presence of Suresh, then it was got identified from Ramesh, therefore, under these circumstances, we are unable to agree with the finding of the trial Court that the prosecution has been able to establish that the Lungi which was recovered from the spot belongs to accused Shiv Shanker. There is no other evidence to connect the accused persons with the crime.

In view of the above, the prosecution has failed to establish the crime against the accused persons based on the circumstantial evidence in view of settled law for convicting the accused based on the circumstantial evidence.

In the circumstances, we are of the opinion that the judgment of conviction and sentence passed by the trial Court convicting the accused/appellants and sentencing them for the aforesaid offences

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Soma	cannot be sustained. The prosecution has not been able to prove the crime against the accused/appellants beyond reasonable doubt. In the result, the appeal succeeds and the same is allowed. The appellants are acquitted of the charges under Sections 394 read with Section 397 and 302 read with Section 34 of the I.P.C. They be set at liberty forthwith, if not required in any other case. In view of this order, I.A.Nos.4651/2004 and 4652/2004 stand disposed of. Certified copy as per Rules. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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24/1/05